

Applicants: Graham P. Allaway et al.
Serial No.: 09/904,356
Filed: July 12, 2001
Page 2 of 5 of Communication in Response to May 13, 2009 Office
Action and Supplemental Information Disclosure
Statement

REMARKS

Claims 26, 28-31 and 33-35 are pending in the subject application. Applicants have not added, amended, or cancelled any claims herein.

Obviousness-Type Double Patenting Rejection

In the May 13, 2009 Office Action, the Examiner rejected claims 26, 28-31 and 33-35 as allegedly unpatentable on the ground of nonstatutory obviousness-type double patenting over claims 1-8 of U.S. Patent No. 7,118,859.

In response, applicants respectfully traverse this obviousness-type double patenting rejection. However, in order to expedite prosecution and without conceding the correctness of the Examiner's position, applicants enclose herewith as **Exhibit A**, a Terminal Disclaimer signed by an authorized official of the assignee of record of U.S. Patent No. 7,118,859, and of the subject application, namely Progenics Pharmaceuticals, Inc.

In accordance with 37 C.F.R. §1.321(b), the Terminal Disclaimer submitted herewith as Exhibit A specifies the portion of the term of the patent being disclaimed, states the present extent of the assignee's ownership interest in the patent to be granted, and is accompanied by a check including the SEVENTY DOLLAR (\$70.00) fee set forth in §1.20(d). Accordingly, applicants maintain that the Terminal Disclaimer submitted herewith complies with the requirements of 37 C.F.R. §1.321(b), and respectfully request the Examiner to withdraw this rejection.

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SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

In accordance with the duty of disclosure under 37 C.F.R. §1.56, applicants direct the Examiner's attention to the following items, which are listed on the Form PTO-1449 (Substitute) attached hereto as **Exhibit B**. Item 1 is a U.S. Patent. As permitted by 37 C.F.R. 1.98(a)(2)(ii), no copy of item 1 is included herewith. Copies of items 2-17 are attached hereto as **Exhibits 1-16**, respectively.

1. U.S. Patent No. 7,501,123, issued March 10, 2009 to Roschke et al.;
2. Final Office Action issued February 4, 2009 in connection with U.S. Serial No. 11/316,078 (**Exhibit 1**);
3. March 25, 2009 Office Action issued in connection with U.S. Serial No. 11/175,815 (**Exhibit 2**);
4. Extended European Search Report, including a European Search Report and a European Search Opinion, issued April 17, 2009 in connection with European Patent Application No. 08168669.3 (**Exhibit 3**);
5. May 1, 2009 Final Office Action issued in connection with U.S. Serial No. 11/258,963 (**Exhibit 4**);
6. Notification of Transmittal of the International Search Report and the Written Opinion of the International Searching Authority, or the Declaration issued May 8, 2009 in connection with PCT International Publication No. PCT/US08/08752 (**Exhibit 5**);
7. Prado, J. et al. (2002) "Amprenavir-resistant HIV-1 exhibits lopinavir cross-resistance and reduced replication capacity," AIDS, Vol. 16, pp. 1009-1017 (**Exhibit 6**);
8. Hanna, G. et al. (2000) "Patterns of Resistance Mutations Selected by Treatment of Human Immunodeficiency Virus Type 1 Infection with Zidovudine, Didanosine, and Nevirapine," Vol. 181, pp. 904-911 (**Exhibit 7**);

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9. Greenberg, M. and Cammack, N. (2004) "Resistance to enfuvirtide, the first HIV fusion inhibitor," Vol. 54, pp. 333-340 (**Exhibit 8**);
10. May 13, 2009 Office Action issued in connection with U.S. Serial No. 09/904,356 (**Exhibit 9**);
11. January 8, 2009 Declaration Under 37 C.F.R. §1.132 of Ms. Kirsten Nagashima filed January 9, 2009 in connection with U.S. Serial No. 11/258,963 (**Exhibit 10**);
12. June 23, 2009 Final Office Action issued in connection with U.S. Serial No. 11/805,573 (**Exhibit 11**);
13. June 26, 2009 Final Office Action issued in connection with U.S. Serial No. 11/581,944 (**Exhibit 12**);
14. June 23, 2009 Final Office Action issued in connection with U.S. Serial No. 09/460,216 (**Exhibit 13**);
15. June 26, 2009 Office Action issued in connection with U.S. Serial No. 11/520,556 (**Exhibit 14**);
16. July 14, 2009 Final Office Action issued in connection with U.S. Serial No. 11/804,746 (**Exhibit 15**); and
17. August 7, 2009 Advisory Action issued in connection with U.S. Serial No. 11/581,945 (**Exhibit 16**).

This Supplemental Information Disclosure Statement is being submitted under 37 C.F.R. 1.97(c)(2). Accordingly, applicants enclose herewith a check including the amount of \$180.00.

The Examiner is respectfully requested to make the listed items of record in the present application by initialing and returning a copy of the enclosed Form PTO-1449 (Substitute).

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

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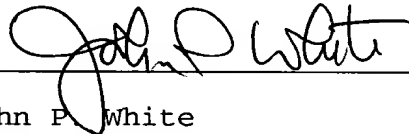
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No fee, other than the total enclosed fee of \$250.00, including a \$70.00 fee for filing a Terminal Disclaimer and a \$180.00 fee for filing an Information Disclosure Statement, is deemed necessary in connection with the filing of this Communication and Supplemental Information Disclosure Statement. However, if any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.


Respectfully submitted,



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I hereby certify that this correspondence is being deposited on this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:

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8/13/09

John P. White Date
Reg. No. 28,678

EXHIBIT A